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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of ) MM Docket No. 92-316  
RIVERTOWN COMMUNICATIONS COMPANY, INC. ) File No. BPH-911008ME  
SAMPLE BROADCASTING COMPANY, L.P. ) File No. BPH-911010ME  
For Construction Permits For a )  
New FM Station on Channel 282C3 )  
at Eldon, Iowa )

TO: Administrative Law Judge  
John M. Frysiak

OPPOSITION TO PETITION TO ENLARGE ISSUES

Rivertown Communications Company, Inc. ("Rivertown"), by its attorney, herewith submits its opposition to the **Petition to Enlarge Issues** filed herein by Sample Broadcasting Company, L.P. ("Sample") on February 22, 1993, stating as follows:

I. Background

Sample seeks enlargement of the issues as to two unrelated subjects:

(1) Whether Rivertown's president, David W. Brown, was culpably involved in an alleged violation of Section 73.1560(b) of the Commission's Rules by Station KMCD-FM, Fairfield, Iowa, on an unspecified date in 1988 when he was general manager of that station; and

(2) Whether Rivertown was financially qualified at the time Mr. Brown certified to its financial qualifications on October 4, 1991, and whether it is currently financially qualified.

As will be shown below, Sample's allegations are without merit, and its petition must be denied.

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II. David Brown Was Not Involved In Any  
Scheme to Reduce Power of Station  
KMCD-FM As Alleged By Sample

Based solely upon the undated "affidavit" of one Jeff Hansen (who chooses not to reveal his current address or employer), Sample accuses Mr. Brown of having directed Hansen to surreptitiously reduce the power of Station KMCD-FM, Fairfield, Iowa, on one afternoon "in mid 1988," in order to impress upon one of the station's absentee owners (who was to visit the area that afternoon) of the need to improve the station's facilities by moving to a better tower site closer to Ottumwa.

As detailed in Mr. Brown's Statement (Exhibit 1 hereto), Mr. Hansen's charges are false, and nonsensical.<sup>1</sup>

Mr. Brown states that Hansen was employed at KMCD-AM and KMCD-FM from late March or early April of 1988, until November 1988, when Hansen quit without notice, after learning that he was about to be replaced; Brown notes that Hansen's imminent dismissal was related to insubordination and alcohol abuse. With respect to the substance of Hansen's Statement, Brown concludes that "Hansen's tale is an elaborate embellishment upon a number of well-known and unremarkable facts." Brown notes that he had become manager of the Fairfield stations in mid-1987, when their business had been in a state of decline, for a

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<sup>1</sup> Brown notes that he first heard of Hansen's charge in the Fall of 1989, when he received a call from Mark McVey (Chief Engineer of KMCD-FM in 1988, and now 20% owner of the Eddyville, Iowa station employing Carmela Sample), advising him that a private investigator hired by the owners of KMCD-FM had interviewed him concerning Hansen's claim, and that he (McVey) had said that he knew nothing about it.

number of reasons, including poor FM coverage. That problem resulted from the fact that its antenna was located on the KMCD-AM tower, resulting in an antenna height above average terrain of only 135 feet; rather than the 328 foot AAT antenna height which its Class A status permitted. Attachment A to Brown's Statement is a contemporaneous document, Brown's letter of April 22, 1988, to John Pritchard, then-CEO of the licensee, concerning, inter alia, the station's coverage problems. Shortly thereafter, Brown was advised by John Pritchard that the licensee's board of directors had tentatively decided to proceed with an application to relocate the FM facility, subject to final approval after his brother (Lester) and sister (Sarah Nielsen) personally inspected the station and market.

That visit occurred Friday, April 29 (not in "mid-1988" as alleged by Hansen); Brown alerted the station staff to the impending visit by the owners, and concedes the probability that he advised the staff that the purpose of their visit was to confirm their tentative decision to relocate the FM antenna/transmitter. Brown affirms that Lester Pritchard and Sarah Nielsen arrived at approximately 3 p.m.; that they drove to Ottumwa (some 25 miles west of Fairfield), and had a late lunch at a McDonalds, and then drove around Ottumwa so that they could get a feel for its business activity. During this drive, Brown explains, they listened only briefly to KMCD-FM, but for the most part were tuned to other listenable signals. Brown observed

"nothing unusual about the quality or strength of the KMCD-FM signal during those periods when they had the radio tuned

to it: The KMCD-FM signal got progressively marginal as we approached Ottumwa, and faded out altogether about five miles east of Ottumwa, but that was its normal condition."

Brown states that they returned to Fairfield at about 5 PM, and Lester Pritchard advised him that they wished to proceed with the application to move and upgrade the FM. Ms. Nielsen visited the studios briefly, and then she and Mr. Pritchard left, presumably returning to Galesburg. Brown confirms that the licensee soon acquired a lease on property some five miles west of Fairfield (in the direction of Ottumwa, and on higher ground than the original AM site), and applied for the new facility in June 1988.

Brown describes the second page of Mr. Hansen's affidavit as

"false in all material respects: I did not conceive of the 'plan' he ascribes to me, nor did I direct him to implement such a 'plan,' which is absurd on its face. As noted above, KMCD-FM did not have a listenable signal in Ottumwa, and no reduction in its authorized power would have been required to demonstrate its inadequacy. I have serious doubts that the old Gates transmitter which we had was even capable of the adjustments he describes. Moreover, I am informed by competent engineers that the 'recalibration' of the remote control transmitter monitor as described by him could have been performed solely at the transmitter, requiring no coordination with an individual at the remote control point as alleged by Hansen.

"His further claim, that I instructed him to padlock the transmitter building and keep the keys 'to frustrate access incase the owner desired to visit the transmitter building,' is both false and irrational, in that: (1) The transmitter building was always kept locked; (2) At least five keys to its lock existed, most of which were in the possession of various personnel potentially having a need to enter the building (including myself and Mark McVey), and at least one of which was kept at the studio in the FM control room; (3) I would not have had the remotest thought that Lester Pritchard (who, as noted, is wheelchair-bound) or his sister would want to visit the transmitter building, much less that if they did so, they would have the sophistication to recognize that the FM transmitter was being operated at only 500 watts, rather than 3500 watts, as claimed by Hansen."

Brown concludes:

"In summary, the principal thrust of Hansen's affidavit, and the Sample allegations based upon it, are simply false. It is conceivable that Hansen took it upon himself to reduce the transmitter power that afternoon, in the mistaken view that this would result in greater job security, and now seeks to avoid blame for that action by attributing it to a 'plan' conceived of by me; or it may be that his story has no basis in fact, and that his only motivation is his hostility to me since his abrupt departure from the station in 1988, when he learned of my plans to replace him. Whatever his motivation, I had no such 'plan,' never instructed him to take such actions, and was never aware of the possibility that such actions may have occurred until late 1989."

Exhibit 2 hereto, the **Statement** of David A. Bowen dated March 1, 1993, sheds additional light on the Hansen claims. Mr. Bowen (a Fairfield businessman whose wife, Ellen Bowen, worked for Stations KMCD-AM and -FM in 1988, and is a 45% stockholder of Rivertown) recounts a conversation with Mr. Rock Davis, an employee of a local hardware store, after Hansen had left KMCD-FM in November 1988, in which Davis told Bowen, "Hansen said he would like to get even with Dave Brown, if he was given the chance." It appears that Sample has given Hansen that "chance."

### III. Rivertown's Financial Qualifications

Sample challenges the financial qualifications of Rivertown Communications Company, Inc., and Brown's certification thereof in October 1991, claiming (p. 9) that "Rivertown lacks reasonable assurance of any of the funds on which it initially relied, and which it continues to rely upon for its financial certification." Sample's claim rests on the following assertions:

- A) That John Pritchard's proposed loan of \$240,000

may not be relied upon, because (1) Pritchard's commitment letter was addressed to David Brown, rather than to Rivertown, and (2) Pritchard's balance sheet of June 30, 1991 (which shows liquid assets of more than \$1,000,000 in excess of all liabilities) failed to show his net after-tax income for the prior two years.

B) That David Bowen's commitment letter of August 26, 1991 to loan \$15,000 to Rivertown was unaccompanied by his balance sheet; and

C) That David Brown's commitment to contribute \$10,000 to Rivertown, as shown at Section III of the Rivertown application, is unsupported with any documentation.

These assertions, while in the main factually accurate, do not support the addition of either financial qualifications or financial certification issues.

A. John Pritchard's Proposed Loan of \$240,000

As noted, Sample challenges the adequacy of John Pritchard's proposed loan of \$240,000 on two grounds. As shown in Mr. Brown's **Statement** (Exhibit 1), and that of John Pritchard (Exhibit 3), the answers to Sample's challenges are straightforward:

That Pritchard's letter confirming the loan is addressed to Mr. Brown, rather than to Rivertown Communications, Inc., results from the fact that Brown had not yet formed Rivertown

Communications Company, Inc., when that letter was written.<sup>2</sup> Regardless of what legal form the applicant entity was to take, however, both Brown and Pritchard make clear that it was their mutual understanding that Pritchard's loan would be to that entity, rather than to Brown personally. Confirmation of that intent is demonstrated in Pritchard's contemporaneous requirement that the loan be "secured with personal guarantee of Dave Brown," a redundancy if they intended that the loan be made to Brown in his personal capacity.

That Pritchard's financial statement of June 30, 1991, did not reveal his net income after taxes for the two prior years, is true, but irrelevant to the question of whether he was (and is) capable of making the \$240,000 loan to Rivertown, in view of the fact that Pritchard's liquid assets exceeded his liabilities by more than four times the amount of his proposed loan.<sup>3</sup> Even had

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<sup>2</sup> Sample cites REM Malloy Broadcasting, 6 FCC Rcd 5843, for the proposition that the commitment letter must be addressed to the applicant entity rather than to a principal, or to a corporate entity rather than to the applicant partnership. Review of that case reveals that the fact focused upon exclusively by Sample was but one of several pointed to by the Board in finding the respective applicants' bank letters prima facie deficient, requiring evidentiary hearing.

<sup>3</sup> While it is correct that the Instructions accompanying Form 301, Section III state that, for each person agreeing to extend credit, the applicant must have documentation which includes, in addition to a balance sheet or financial statement showing such person's current assets, liabilities, and financial ability to meet the terms of the proposed loan, "net income after Federal income tax, received for the past two years," Sample cites no case for the proposition that failure to show a lender's after-tax income for the prior two years, standing alone, renders the proposed loan a nullity.

(continued...)

Pritchard had no income (an impossibility, given his portfolio of stocks and bonds), he was -- and appeared to Brown to be -- fully capable of making the loan.

B. David Bowen's Proposed Loan of \$15,000

Sample challenges David Bowen's letter of August 26, 1991, proposing to loan \$15,000 to Rivertown Communications, on the ground that the letter fails to set forth any collateral. As explained by both David Brown (Exhibit 1) and David Bowen (Exhibit 4), the reason for that was simply that no collateral was or is contemplated, for two independent reasons:

(1) Mr. Pritchard's loan of \$240,000 is to be secured by the station's accounts receivable and physical assets, as well as by Brown's personal guarantee, leaving no meaningful collateral to secure Bowen's loan; (2) The principal reason for Bowen's proposed loan is that his wife, Ellen, is an officer, director, and 45% stockholder in Rivertown.

Sample also points to the apparent failure of David Bowen to supply Brown with his personal balance sheet in connection with

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<sup>3</sup>(...continued)

The origins of that particular instruction are obscured by the mists of time, but logic suggests that the relevance of such information arises only where the showing of the lender's assets and liabilities indicates a liquidity shortfall, and thus a potential need for the lender to rely on future income to contribute to his ability to make the loan. Here, where Pritchard's liquid assets exceed all of his liabilities by over one million dollars -- more than four times the proposed loan -- it is irrelevant to the question of Pritchard's ability to make the loan whether his after-tax income was over \$50,000 per year, as he states in Exhibit 3, or zero.

his August 26, 1991 loan proposal letter. The reason for this, as explained by both Messrs. Brown and Bowen, and confirmed by Ellen Bowen (Exhibit 5) is simply that Mr. Bowen's wife, Ellen Bowen (an officer, director and 45% stockholder of Rivertown), is fully informed as to their financial condition, and assured Mr. Brown that she and her husband would have no difficulty making such a loan from their immediately available funds. Submitted as an attachment to Mr. Bowen's **Statement** is the bank statement for his business checking account<sup>4</sup> covering the month of July 1991 (immediately preceding his August 26, 1991 letter to Rivertown), with beginning and ending balances both in excess of \$42,000 -- nearly three times the amount of his loan commitment to Rivertown. Ms. Bowen's direct knowledge of her husband's financial ability to make the \$15,000 loan to Rivertown from his immediately available cash may be attributed to Rivertown, since (a) she is its Treasurer and a Director, and (b) she specifically confirmed to David Brown the Bowens' ability to make the loan from immediately available funds.

C. David Brown's Ability to Contribute \$10,000 to Rivertown

Sample claims (p. 7) that "There is no documentation of any kind to verify or support David Brown's proposed loan of \$15,000 (sic; read \$10,000)."<sup>5</sup> Mr. Brown (Exhibit 1, p. 9) concedes that

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<sup>4</sup> The account is in the name of "Dave's Plumbing and Heating, Dave or Ellen Bowen."

<sup>5</sup> Sample appears to have confused David Bowen, who is to loan \$15,000, with David Brown, who is to loan \$10,000. We assume that the quoted statement was intended as a criticism of David Brown's proposed loan.

he did not write a letter to himself (as president of Rivertown) agreeing to loan or otherwise contribute \$10,000, explaining:

"Since I prepared and signed the application personally, and identified myself in the application as the source of \$10,000, that seemed to me to be sufficient documentation of my intent. For much the same reason, I did not deem it necessary to prepare my personal balance sheet to prove (to myself) that I had reasonable assurance of my own ability to contribute \$10,000 to Rivertown. However, lest there be any residual doubt on this, I have prepared, and attach as Attachment B, my personal balance sheet as of September 30, 1991. I should also point out that as of today, I have advanced to or on behalf of Rivertown \$8,500.54, in order to pay its ongoing expenses."

D. Rivertown's Cost Estimates Include  
A "Cushion" of Over \$28,000

Sample claims (p. 9): "Based on the information contained in its application, Rivertown requires the full \$265,000 to meet its estimated costs; it has no cushion." Sample's premise is faulty, as it must have realized from its review of the Rivertown's financial documents supplied to it on February 18 pursuant to the Standard Document Production.<sup>6</sup>

As shown in Mr. Brown's **Statement**, the \$265,000 total stated in Rivertown's application includes a substantial cushion of over \$28,000: Attachments C and D to Brown's **Statement** (documents which were furnished to Sample on February 18, pursuant to the

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<sup>6</sup> Sample's Petition smacks of hypocrisy. While Rivertown exchanged on February 18 documents showing its itemized construction costs totalling \$160,411, and three months operating costs totalling \$32,205, Sample ignores these, and points only to the application figure of \$265,000 as support for its claim that Rivertown "has no cushion." At the same time, Sample has exchanged no documents reflecting its projected costs of construction or operation.

Standard Document Production), Rivertown's total equipment costs are estimated to be \$160,411, and its first three months' operating expenses are projected to be \$32,205, for a total of \$192,616. In addition, Brown had budgeted \$40,000 for hearing expenses and fees; and \$4,000 for installation costs, leaving a "cushion" of \$28,384. His rough notes reflecting these amounts are included as Attachment E to his **Statement**.<sup>7</sup>

In summary, the foregoing demonstrates that John Pritchard and David Bowen had, and have, the financial ability to meet their respective loan commitments to Rivertown; that Brown could personally contribute \$10,000 to Rivertown (and has to date contributed \$8,500 thereof); that Rivertown has an ample "cushion" in its budget, rendering reliance upon the Bowen and Brown commitments unnecessary; and that Rivertown was and is financially qualified to construct and operate its proposed station.

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<sup>7</sup> Brown explains that these were not exchanged earlier because he did not perceive them to be "documents" in view of their roughness.

It should also be noted that Attachment C to Mr. Brown's **Statement** -- the typed equipment list -- contains two errors in addition: (1) the "total" for the items of studio equipment is \$41,050, not \$39,279 as shown; and (2) the "grand total" of all items is \$160,411, not \$161,848 as shown.

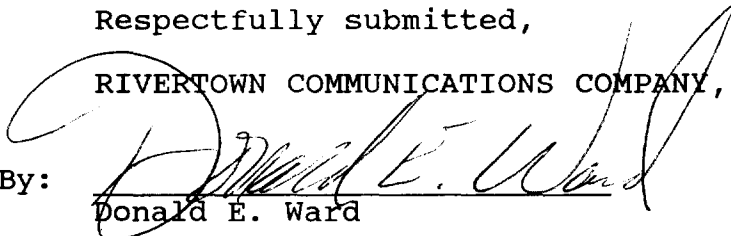
IV. Conclusion

In view of the foregoing, neither of the issues requested by Sample is warranted. Accordingly, its Petition must be denied.

Respectfully submitted,

RIVERTOWN COMMUNICATIONS COMPANY, INC.

By:

  
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Its Attorney

March 9, 1993

STATEMENT OF DAVID W. BROWN

This is in response to the Petition to Enlarge Issues filed by Sample Broadcasting Company on February 22, 1993. Sample seeks to raise two distinct issues, which will be dealt with below separately.

1. The Claim That I Caused Station KMCD-FM To Violate Section 73.1560(b) of the Rules and Perpetrated a Fraud on Its Owners

Based upon the affidavit of Jeff Hansen, Sample alleges that at some time "in mid-1988," when I was general manager of Station KMCD-FM, Fairfield, Iowa, Mr. Hansen, pursuant to my orders, surreptitiously reduced the power of KMCD-FM from 3500 watts to 500 watts one afternoon, and that I rationalized this as a means to persuade its absentee owners (who were to visit the station that afternoon) of the need to improve its coverage by relocating its tower. While I have no direct knowledge of what Mr. Hansen may have done on the day in question, I gave him no such orders, and the motives which he ascribes to me for giving such orders are nonsense.

I should point out that this is not the first time that I have heard of Hansen's charge: The first time was in the Fall of 1989, when I received a call from Mark McVey (who had been working under me as Chief Engineer of KMCD-FM in 1988<sup>1</sup>), advising me that a private investigator hired by the owners of KMCD-FM had interviewed him concerning Hansen's claim, and that he (McVey)

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<sup>1</sup> This is the same Mark McVey who is currently the 20% owner of Station KKSI-FM, Eddyville, which is the employer of Ms. Sample and which is 25% owned by Bruce Linder, Sample's limited partner.

had said that he knew nothing about it. I received a call a day or so later from the investigator (whose name I do not recall), who summarized Hansen's charges, and asked me to make a statement. I felt that I was being placed in the middle of a family dispute over the management and control of KMCD-FM,<sup>2</sup> and declined to make any statement. I heard nothing further concerning Hansen's claim until the filing of the Sample Petition.

Hansen was employed at KMCD-AM and -FM from late March or early April of 1988, until November 1988, when he quit without notice. I had hired him as Program Director, and his duties included announcing the FM morning shift, production, and some studio maintenance. His abrupt departure came upon his learning that I was looking for a replacement for him, for which I had received John Pritchard's approval. I was seeking to replace him for a number of reasons, including insubordination and alcohol abuse.

Hansen's tale is an elaborate embellishment upon a number of well-known and unremarkable facts. When I assumed the managership of the Fairfield stations in mid-1987, their business had been in a state of decline, for a number of reasons,

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<sup>2</sup> In 1988, John Pritchard was CEO of Galesburg Broadcasting Company, licensee of KMCD-FM (and KMCD-AM) in Fairfield, as well as WGIL(AM) and WAAG(FM) in Galesburg, Illinois. He had hired me as Program Director of the Fairfield stations in June 1987, and promoted me to General Manager in August 1987, a position from which I resigned effective June 30, 1989. John Pritchard had been replaced as CEO of Galesburg Broadcasting Company in April 1989 by his brother, Lester Pritchard, and it was common knowledge that John and Lester did not see eye-to-eye on questions of station management.

including poor management, poor FM coverage, and the poor quality of the FM signal. While I was able to address the management problems, and reversed the revenue decline by early 1988, FM coverage and signal quality were continuing problems.

KMCD-FM's coverage problem stemmed from the fact that its antenna was located on the KMCD-AM tower, resulting in an antenna height above average terrain of only 135 feet; as a Class A station, it was limited in power to 3 kilowatts, and had not taken advantage of the 328 foot AAT antenna height which its Class A status accorded it.

KMCD-FM's signal quality problem resulted from the fact that its transmitter was about 25 years old, of a vacuum tube type rather than solid state. It had been designed for a different frequency, and modified to the KMCD-FM frequency when purchased used by the licensee several years earlier. In fact, Mr. McVey, our Chief Engineer, had advised me in the Spring of 1988 that because of the frequency change and the resulting change in efficiency, it was impossible to determine the transmitter's effective power.

On April 22, 1988, I wrote to John Pritchard, then-CEO of the licensee, concerning both our progress in restoring the station's image and sales, and our coverage problems. A copy of that letter is Attachment A hereto. Several days later, he advised me that the board of directors had tentatively decided to proceed with an application to relocate the FM facility, subject to final approval after his brother (Lester) and sister (Sarah Nielsen) personally inspected the station and market. A visit

was scheduled for Friday, April 29, and I alerted the station staff to the impending visit by the owners, to ensure that the studios would be neat and clean on their arrival. It is probable that I also informed the staff that the purpose of their visit was to confirm their tentative decision to relocate the FM antenna/transmitter, and thus give the station the improved coverage which we felt would lead to greater success. (Thus, the second substantive paragraph of Mr. Hansen's affidavit is essentially accurate, with the possible exception of the final clause, in which he states that my "clear implication" in outlining the importance of improving the FM facility included "the probable loss of our jobs at the station" if the facility was not improved. No such implication was intended by me.

On the appointed day, Lester Pritchard and Sarah Nielsen arrived at approximately 3 p.m., and I joined them in Lester's van. They asked me what the frequency of KMCD-FM was, and I told them. We drove to Ottumwa (some 25 miles west of Fairfield), and had a late lunch at the South Side McDonalds, and then drove around Ottumwa so that they could get a feel for its business activity. During this drive, they listened only briefly to KMCD-FM, but for the most part were tuned to other listenable signals, I suppose to get some idea of the competition. During our drive, I noticed nothing unusual about the quality or strength of the KMCD-FM signal during those periods when they had the radio tuned to it: The KMCD-FM signal got progressively marginal as we approached Ottumwa, and faded out altogether about five miles east of Ottumwa, but that was its normal condition. We returned

to Fairfield approximately 5 p.m., and Lester advised me that they wished to proceed with the application to move and upgrade the FM. Sarah Nielsen came into the studios for about three minutes, while Lester remained in his van (he is confined to a wheelchair); and they then left, presumably to return to Galesburg (some 100 miles to the east).

Shortly thereafter, we acquired a lease on property some five miles west of Fairfield (in the direction of Ottumwa, and on higher ground than the original AM site), and applied for the new facility in June 1988.

The second page of Mr. Hansen's affidavit is false in all material respects: I did not conceive of the "plan" he ascribes to me, nor did I direct him to implement such a "plan," which is absurd on its face. As noted above, KMCD-FM did not have a listenable signal in Ottumwa, and no reduction in its authorized power would have been required to demonstrate its inadequacy. I have serious doubts that the old Gates transmitter which we had was even capable of the adjustments he describes. Moreover, I am informed by competent engineers that the "recalibration" of the remote control transmitter monitor as described by him could have been performed solely at the transmitter, requiring no coordination with an individual at the remote control point as alleged by Hansen.

His further claim, that I instructed him to padlock the transmitter building and keep the keys "to frustrate access incase the owner desired to visit the transmitter building," is both false and irrational, in that: (1) The transmitter building

was always kept locked; (2) At least five keys to its lock existed, most of which were in the possession of various personnel potentially having a need to enter the building (including myself and Mark McVey), and at least one of which was kept at the studio in the FM control room; (3) I would not have had the remotest thought that Lester Pritchard (who, as noted, is wheelchair-bound) or his sister would want to visit the transmitter building, much less that if they did so, they would have the sophistication to recognize that the FM transmitter was being operated at only 500 watts, rather than 3500 watts, as claimed by Hansen.

In summary, the principal thrust of Hansen's affidavit, and the Sample allegations based upon it, are simply false. It is conceivable that Hansen took it upon himself to reduce the transmitter power that afternoon, in the mistaken view that this would result in greater job security, and now seeks to avoid blame for that action by attributing it to a "plan" conceived of by me; or it may be that his story has no basis in fact, and that his only motivation is his hostility to me since his abrupt departure from the station in 1988, when he learned of my plans to replace him. Whatever his motivation, I had no such "plan," never instructed him to take such actions, and was never aware of the possibility that such actions may have occurred until late 1989.

## 2. The Financial Qualifications of Rivertown

Sample challenges the financial qualifications of Rivertown Communications Company, Inc., and my certification thereof in

October 1991, claiming (p. 9) that "Rivertown lacks reasonable assurance of any of the funds on which it initially relied, and which it continues to rely upon for its financial certification." Its claim rests on various grounds; these will be individually noted and addressed below.

A. John Pritchard's Proposed Loan of \$240,000

Sample challenges the adequacy of John Pritchard's proposed loan of \$240,000 on two grounds: (1) His letter confirming the loan is addressed to me, rather than to Rivertown Communications, Inc.; and (2) His financial statement does not reveal his net income after taxes for the two prior years.

As to the first point, at the time of his letter, I had not yet formed Rivertown Communications Company, Inc.; in fact, I was then contemplating forming a partnership with Ms. Bowen, rather than incorporating. Regardless of what legal form the applicant entity was to take, it was our mutual understanding that his loan would be to that entity, rather than to me personally; that intent was manifested in his requirement that the loan be "secured with personal guarantee of Dave Brown," which would be meaningless if we intended that the loan be made to me personally.

As to the second point, it is literally correct that John Pritchard's financial statement did not reflect his net income for the prior two years. I did not perceive the relevance of that information to his ability to make the loan, particularly in view of his liquid assets, which exceed his liabilities by more than four times the amount of his proposed loan. Even had he had

no income (an impossibility, given his portfolio of stocks and bonds), he appeared fully capable of making the loan.

B. Dave Bowen's Proposed Loan of \$15,000

Sample challenges Dave Bowen's letter of August 26, 1991, proposing to loan \$15,000 to Rivertown Communications, on the ground that the letter fails to set forth any collateral. The reason for that is simply that no collateral was or is contemplated, for two reasons: (1) Mr. Pritchard's loan of \$240,000 will be secured by the station's accounts receivable and physical assets, as well as by my personal guarantee, leaving no meaningful collateral to secure Dave Bowen's loan; (2) The principal reason for Dave Bowen's proposed loan is that his wife, Ellen, is an officer, director, and 45% stockholder in Rivertown.

Sample also notes that Dave Bowen did not supply me with his personal balance sheet in connection with his August 26, 1991 loan proposal letter. The reason for this is simply that his wife, Ellen Bowen (who, as noted, is an officer, director and 45% stockholder of Rivertown), is fully informed as to their financial condition, and assured me that they would have no difficulty making such a loan from their immediately available funds. I have known Dave and Ellen for over 5 1/2 years, and had every confidence in their ability to do so.

C. My Ability to Contribute \$10,000 to Rivertown

Sample claims (p. 7) that "There is no documentation of any kind to verify or support David Brown's proposed loan of \$15,000." (Sample appears to have confused David Bowen, who is to loan \$15,000, with David Brown, who is to loan \$10,000. I

assume that the quoted statement was intended as a criticism of my proposed loan.) It is literally true that I did not write a letter to myself (as president of Rivertown) agreeing to loan or otherwise contribute \$10,000. I did not view that as necessary; since I prepared and signed the application personally, and identified myself in the application as the source of \$10,000, that seemed to me to be sufficient documentation of my intent. For much the same reason, I did not deem it necessary to prepare my personal balance sheet to prove (to myself) that I had reasonable assurance of my own ability to contribute \$10,000 to Rivertown. However, lest there be any residual doubt on this, I have prepared, and attach as Attachment B, my personal balance sheet as of September 30, 1991. I should also point out that as of today, I have advanced to or on behalf of Rivertown \$8,500.54, in order to pay its ongoing expenses.

D. Rivertown's Cost Estimates Include a "Cushion" of \$28,000

Sample claims (p. 9): "Based on the information contained in its application, Rivertown requires the full \$265,000 to meet its estimated costs; it has no cushion." Sample's premise is faulty.

While it is correct that I responded to question 2 of Section III of the application<sup>3</sup> with the amount \$265,000, that amount does include a substantial cushion. As reflected in Attachments C and D hereto (documents which were furnished to Sample on February 18, pursuant to the Standard Document

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<sup>3</sup> "State the total funds you estimate are necessary to construct and operate the requested facility for three months without revenue."

Production), Rivertown's total equipment costs are estimated to be \$160,411, and its first three months' operating expenses are projected to be \$32,205, for a total of \$192,616. In addition, I had budgeted \$40,000 for hearing expenses and fees; and \$4,000 for installation costs, leaving a "cushion" of \$28,384. My notes reflecting these amounts are included as Attachment E; they were not exchanged earlier because I did not perceive them to be "documents" in view of their roughness.

In summary, I was fully confident in October 1991, and am equally confident today, that John Pritchard and David Bowen had, and have, the financial ability to meet their respective loan commitments; that I could personally contribute \$10,000 to Rivertown (and can and will contribute the balance of \$1,500 of that sum in the near future, to defray hearing costs); and that Rivertown was and is financially qualified to construct and operate the proposed station.

I hereby certify, under penalty of perjury, that the foregoing statement is true and correct.

A handwritten signature in cursive script, appearing to read "David W. Brown", written in dark ink.

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David W. Brown

THE REGISTER MAIL  
ATTN: JOHN PRITCHARD  
140 SOUTH PRAIRIE  
GALESBURG, IL 61402-310

APRIL 22, 1988

DEAR JOHN & THE BOARD,

THIS YEAR, THUS FAR HAS BEEN A RE-BUILDING YEAR FOR BOTH LISTENERSHIP AND SALES. AS YOU MAY BE WELL AWARE...THE STATION HAS SUFFERED FROM A SIGNIFICANT IMAGE PROBLEM DURING THE PAST SEVERAL YEARS IN THE IMMEDIATE FAIRFIELD AREA. THIS IMAGE PROBLEM HAS REDUCED THE STATION'S LISTENERSHIP DRASTICALLY, THUS AFFECTING SALES INCOME. AS FAR AS THE OUTSIDE TERRITORY IS CONCERNED...SUCH AS OTTUMWA, MT. PLEASANT, WASHINGTON, ETC., THE STATION HAS NEVER REALLY SUFFERED FROM AN IMAGE PROBLEM, SINCE THE STATION HAS NEVER AGGRESSIVELY PURSUED THESE AREAS, BECAUSE OF THE LACK OF SIGNAL STRENGTH.

SINCE LAST FALL, AFTER CHANGING FORMATS, OUR STATION HAS MADE TREMENDOUS STRIDES IN RECONCILING PROBLEMS WITH CLIENTS, WHO HAD AT ONE TIME SPENT MONEY WITH US, BUT DUE TO POOR STATION PERFORMANCE IN THE PAST, HAD DROPPED OFF.

SINCE SEPTEMBER 8, 1987 WE HAVE RECEIVED SEVERAL HUNDRED LETTERS AND NUMEROUS PHONE CALLS FROM OUR LISTENERS, WHO ARE PLEASED WITH THE PROFESSIONALISM AND DELIVERY OF OUR NEW FORMATS. WE ARE NOT PERFECT, BUT I CAN ASSURE YOU THAT WE ARE STRIVING FOR PERFECTION.

I ATTRIBUTE A LOT OF THIS TO OUR CONSISTENT TEAM WORK. WE RECENTLY ADDED A NEW SALES PERSON FROM CLEAR RAPIDS, AND A NEW ANNOUNCER FROM DES MOINES...WHO HAVE ADDED A LOT TO OUR SALES AND PROGRAMMING STAFF.

I FEEL THAT OUR STATION'S PERFORMANCE AND COMPETITIVENESS IS NOW AT A POINT WHERE WE CAN AND SHOULD OFFER IT TO A BIGGER AREA, ALLOWING US TO INCREASE OUR SALES POTENTIAL. HOWEVER, DUE TO THE CURRENT LOCATION OF THE TRANSMITTER AND THE HEIGHT OF THE TOWER, WE ARE UNABLE TO PROVIDE A STRONG, CLEAR SIGNAL TO THE NEIGHBORING COMMUNITIES, WHERE WE COULD CAPITALIZE ON A LOT OF ADVERTISING DOLLARS.

BY MOVING OUR FM TRANSMITTER SITE AND INCREASING OUR TOWER HEIGHT, WE WOULD BE ABLE TO PROVIDE A GOOD SIGNAL IN THESE SURROUNDING COMMUNITIES, THUS INCREASING LISTENERSHIP, WHICH IN TURN WOULD RESULT IN INCREASED SALES. OTTUMWA AND MT. PLEASANT ARE TWO CITIES WE STAND TO GAIN THE MOST FROM.

THE POPULATION OF OTTUMWA IS APPROXIMATELY 30,000, AND IS THE HEADQUARTERS FOR 99% OF THE BEER AND POP DISTRIBUTORS IN THIS REGION. THESE TWO TYPES OF BEVERAGE DISTRIBUTORS SPEND A LOT OF MONEY ON RADIO ADVERTISING. I RECENTLY SIGNED COCA-COLA IN ON A CONTRACT FOR APPROXIMATELY \$5,000.00 TO BE SPENT BETWEEN NOW AND SEPTEMBER 30TH. THE NEW MANAGER WAS TRANSFERRED TO OTTUMWA FROM GALESBURG AND SAID THAT HE IS VERY IMPRESSED WITH OUR PROFESSIONAL SOUND. IN FACT HE TOLD ME THAT IF WE INCREASE OUR COVERAGE AREA, THEY WILL PROBABLY SPEND AROUND EIGHT TO TEN THOUSAND DOLLARS WITH US NEXT YEAR, AND WE WOULD RECEIVE EXCLUSIVITY OF THEIR AD DOLLARS.

WE RECEIVED THE SAME TYPE OF MESSAGE FROM MILLER BEER, WHO JUST RECENTLY COMMITTED \$2,500.00 TO US BETWEEN NOW AND SEPTEMBER. WE STAND TO GAIN APPROXIMATELY SEVEN TO NINE THOUSAND DOLLARS NEXT YEAR, PROVIDING THAT WE INCREASE OUR COVERAGE AREA.

THERE ARE OTHER DISTRIBUTORS, AND BUSINESSES FROM THE OTTUMWA AREA, WHO HAVE SAID THAT THEY WILL SPEND MONEY WITH US IF WE INCREASE OUR COVERAGE AREA.

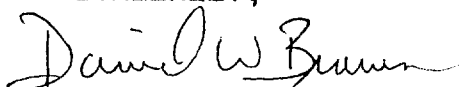
MT. PLEASANT IS A TOWN OF THE APPROXIMATE SIZE OF FAIRFIELD, WITH SEVERAL KEY BUSINESSES WHO WE COULD ALSO RECEIVE AD DOLLARS FROM.

IN CONCLUSION, WE HAVE THE SECOND TO THE LOWEST TOWER HEIGHT IN THE STATE. AND WE ARE COMPETING, SIGNAL-WISE, WITH TWO OTHER STATIONS, ONE TO THE NORTHWEST OF US IN NEWTON, AND THE OTHER TO THE NORTHEAST IN CLINTON, WHO HAVE MOVED TO NEW TRANSMITTER LOCATIONS, AND INCREASED THEIR TOWER HEIGHTS IN 1987. THIS EFFECTIVELY PUSHES OUR SIGNAL BACK TO JUST A FEW MILES OF FAIRFIELD.

WITH THE CONSTRUCTION OF THE NEW TOWER, COMBINED WITH THE EXTRA HEIGHT, WE STAND TO DOUBLE, OR POSSIBLY TRIPLE OUR LISTENERSHIP IN SOUTHEAST IOWA, WHICH IN TURN WILL HELP THE STATION MAKE MORE MONEY THAN IT HAS EVER MADE BEFORE. IT'S MY PRAYER THAT YOU WILL APPROVE THIS EXPANSION PROJECT, ENABLING US TO OBTAIN THIS GOAL SOON.

IF I CAN BE OF ANY MORE ASSISTANCE IN HELPING YOU MAKE A DECISION ON THE APPROVAL OF THIS PROJECT, PLEASE DON'T HESITATE TO ASK. REMEMBER THE OLD SAYING, "OPPORTUNITY DOESN'T COME TO THOSE WHO WAIT, IT COMES TO THOSE WHO ATTACK."

SINCERELY,



DAVID W. BROWN  
GENERAL MANAGER  
KMCD AM & FM

ATTACHMENT B

DAVID W. BROWN  
FINANCIAL STATEMENT  
SEPTEMBER 30, 1991

ASSETS:

CHECKING.....\$752.00  
SAVINGS.....\$ 52.00  
AUTO.....\$1500.00  
MOTORCYCLE.....\$ 700.00  
HOUSEHOLD.....\$ 3000.00  
BUILDING.....\$1750.00  
  
TOTAL ASSETS.....\$7754.00

LIABILITIES:

MEDICAL BILLS.....\$1300.00  
TOTAL LIABILITIES.....\$1300.00  
NET WORTH.....\$6454.00  
  
TOTAL LIABILITIES.....\$7754.00